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December 31, 2016

Hon. Lewis A. Kaplan
Daniel P. Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. Roberto Munoz
16 Cr. 212 (LAK)

Dear Judge Kaplan:

I am counsel for Roberto Munoz, who is scheduled to be sentenced on January 13, 2017 for conspiracy to distribute marijuana, in violation of 21 USC 846, 841(b)(1)(C). He fully accepts responsibility for the offense (see Ex. A: letter from Mr. Munoz) and respectfully requests a sentence of time served and five years of supervised release.

I.

History and Personal Characteristics

Born in 1986, Roberto Munoz was raised by his mother and stepfather in the Bronx. His parents abused drugs and alcohol in the small basement apartment, and Roberto Munoz thought this was standard behavior until he was much older. Because it was a dysfunctional and neglectful environment, his grandmother removed him from the home at the age of eight.

Mr. Munoz's grandmother was strict and focused on providing him with an education. Mr. Munoz had been diagnosed with [REDACTED] since birth, and the [REDACTED] that he was prescribed made him feel like a zombie. His grandmother bought "hooked on phonics," forced him to study, and limited his time outdoors, telling him "the streets would always be there." Mr. Munoz excelled in math at school but struggled with reading comprehension.

When Mr. Munoz turned eleven, his grandmother revealed to him for the first time that his stepfather was not his real father. Although it was shocking, it helped Mr. Munoz understand

Donald J. Yannella, Esq.

why he always had felt like the “dark skinned unpopular” child in the household. It also helped explain why his stepfather had been particularly abusive toward him. For example, his stepfather, a former military man, forced him to kneel on rice for an hour as a form of punishment.

Mr. Munoz was on a [REDACTED] when he was ten years old as a result of [REDACTED]. He started smoking marijuana on a daily basis when he was sixteen and left high school after the tenth grade because he got what seemed like a promising union job as a window cleaner. Although he devoted much time to qualifying for the union, it turned out to be hardly worth the effort because he was only assigned to fill in occasionally for people on vacation or out sick.

Mr. Munoz has known his common law wife, Rosilda Duran, since childhood, and they have two children together. Prior to his arrest, they lived with the children in an apartment that belonged to Mr. Munoz’s uncle and grandmother. Ms. Duran is a dental assistant in the Bronx. They both describe their relationship as being incredibly strong. Ms. Duran writes:

[Roberto] has always been a very sociable, charismatic and caring individual. He is also an exceptional father to our children and they miss him terribly. Not having their father around has affected our emotional and mental state tremendously, as well as our lives in general. We have been struggling beyond our imagination since Roberto’s absence.

(Ex. B: letter from Rosilda Duran)

After Mr. Munoz was arrested, Rosilda Duran had to move to her mother’s apartment, where she shares a single room with all her children.

Despite her drug and alcohol abuse years ago, Mr. Munoz’s mother had been sober and responsible for a substantial period of time prior to her death from liver failure in 2013. Mr. Munoz was particularly close to her. After she died, he “freaked out” and started going to clubs and drinking every day. He had a one night stand with a woman he met at a club, resulting in the birth of a child. Although that put a strain on his relationship with Ms. Duran, she continues to stick by him and visits him at the MDC.

II

The Nature and Circumstances of the Offense

As stated in the PSR, Mr. Munoz was an “associate” of 2Fly who sold marijuana with members of 2Fly. Authorities intercepted multiple telephone conversations in which Munoz arranged for marijuana customers to meet with a member of 2Fly. (PSR ¶ 58)

Although he grew up with members of 2Fly and was close to some of them, he was not a member. He had absolutely no involvement in the acts of violence that brought his marijuana

Donald J. Yannella, Esq.

dealing to the attention of federal law enforcement agents.

III.

The Plea Agreement and Presentence Report

Mr. Munoz pleaded guilty to conspiracy to distribute marijuana in violation of 21 U.S.C. 846, 841(b)(1)(C). The Guidelines calculations in the PSR are identical to those in the plea agreement: the Guidelines range is 24 to 30 months based upon an offense level of 17 and Criminal History Category I.

Even though Mr. Munoz has no criminal history points, he wants to emphasize to the Court that he adamantly denies the factual allegations in paragraph 83 of the PSR: that he “fired a handgun” at a neighbor on January 16, 2016 in front of 1903 Arnow Avenue, Bronx, New York. When Mr. Munoz was arrested for the federal case in April 2016, he was remanded as a danger to the community in large part because of that false factual allegation. On October 21, 2016, that case was resolved with an Adjournment in Contemplation of Dismissal, a disposition that would not have been offered if the Bronx District Attorney’s Office believed he had fired a gun.

According to Mr. Munoz’s Bronx Legal Aid attorney, there was nothing to corroborate the complainant’s allegation: the police recovered no gun, bullet fragments, or shell casings, and there were no bullet holes. What really happened is that the complainant, who has a psychiatric history, was angry at Mr. Munoz for borrowing \$20 from her husband for gas and not repaying him fast enough. She threatened Mr. Munoz had a stick and a knife. The police were called and left without making any arrests. The woman called the police again the next day and falsely reported that Mr. Munoz had fired a gun at her. He was arrested even there were no witnesses and no injuries.

If not for that case, Mr. Munoz probably would have been released and employed for the past eight months. In the past he had worked for car services, at a moving company, at a power washing company, and at a department store. Attached as Exhibit C is a letter from Yohanny Castro, the assistant manager of Blink Fitness, offering Mr. Munoz a maintenance job paying \$10 per hour for 30 to 35 hours per week.

IV.

Just punishment, deterrence, rehabilitation, and the need to provide educational and vocational training, and medical treatment in the most effective manner

Mr. Munoz was arrested on April 27, 2016 and remanded upon his presentment before a United States Magistrate Judge in Nevada. He has been detained at the Metropolitan Detention Center in Brooklyn since May 11, 2016. As of his sentencing date, Mr. Munoz will have served approximately eight and a half months.

Donald J. Yannella, Esq.

At the Metropolitan Detention Center, Mr. Munoz has been working as a cleaner since October 2016, earning \$30 per month. He attended a Leadership program and a Healing program at the MDC. Attached as Exhibit D is a certificate, issued on September 22, 2016, for his participation in the GED Ace Math course.

Except for using other inmate's account numbers to call home in July, 2016, Mr. Munoz has complied with regulations at the Metropolitan Detention Center. (PSR ¶ 10).

Mr. Munoz deserves to be punished, but a sentence of time served and five years of supervised release would be sufficient. He will not return to selling marijuana. Rosilda Duran states:

...Roberto is aware of the gravity of his mistake and I truly believe he is a changed man. Though, this has been an unfortunate situation, it made Roberto a better person. This has helped him re-evaluate his life and the path he was going through. Well enough, not to make the same mistakes ever again. I can assure you Roberto will stay away from everything and everyone that has put him in this predicament.

(Ex. B: letter from Rosilda Duran)

In 18 U.S.C. § 3553(a), Congress mandated that federal sentences be "sufficient, but not greater than necessary" to achieve the sentencing objectives set forth in § 3553(a)(2), namely the traditional goals of retribution, deterrence, incapacitation, and rehabilitation. That statutory provision, which is often called the parsimony clause, is overarching and should take precedence over any provision of the merely advisory Guidelines.

A Guidelines sentence would be ineffective for deterring others. If the purpose of a Guidelines sentence is to deter others, history shows that such a message will not reach its intended audience.

It would be error to presume that the advisory Guidelines range is reasonable. *See Gall v. United States*, 552 US 38, 50, 128 S.Ct. 586 (2007); *United States v. Broxmeyer*, 699 F.3d 265, 290 (2d Cir. 2012) (the district court "cannot assume that a Guidelines sentence is warranted in a particular case but, rather, must make an independent sentencing determination,"); *United States v. Cavera*, 550 F.2d 180, 188 (2d Cir. 2008) (the court must form its own view of the "nature and circumstances of the offense and the history and characteristics of the defendant."). The Guidelines are only the "starting point and the initial benchmark." *Gall*, 552 U.S. at 49.

Donald J. Yannella, Esq.

Conclusion

Mr. Munoz accepts responsibility for his crimes and respectfully requests a downward variance. We submit that a sentence of time served with five years of supervised release would be appropriate.

Mr. Munoz is indigent and cannot afford to pay a fine.

Sincerely,

/s/

Donald J. Yannella, Esq.

EXHIBIT A

Roberto E. Munoz

Judge Lewis Kaplan

December 1, 2016

Dear Honorable Kaplan,

First, I would like to thank you for taking this time out to read my letter. Thank you! My name is Roberto E. Munoz and I have a case before your honor for sentencing consideration.

Your Honor, I take full responsibility for my actions that have placed me before you for the instant offense. I know that it was my poor decisions and even worst, choices that lead me down the wrong path. Please don't view my statements as any excuse but, rather as insight into my life and thoughts.

I would like to mention that, I am not a gang member and never was a gang member. I do admit that I have made poor choices regarding the people I spent my time with.

Your Honor, I am a family oriented man. I was brought up that way and that is how I raise my kids. My family means the world to me and I see how my poor choices have truly affected them as a whole. I have two [2] children and a wife that need me more than ever.

Ever since I lost my mother, Donna Munoz, three [3] years ago, I've been filled with deep depression and this has truly occluded my thoughts. My mother was my best friend. When I lost her, it was like I lost a vital piece of my self. These have been the worst three [3] years of my life, mentally and emotionally. For me, this phase of time was a daily whirlwind and a never ending storm that has disconnected me from life in so many ways.

In spite of my inner struggles, I am thankful to have something to stand strong and live for which is my wife and kids. As I previously mentioned, I have been blessed with two [2] wonderful children. My daughter is eleven [11] years old and she is growing up to be a very

special young lady. I know that it is my responsibility to be that male role model in her life. My son is six [6] years old. That boy is a ball of energy. I witnessed first hand how my actions have affected my son. He was so disappointed that I did not attend his graduation and missed his birthday for the first time ever in his life. It broke my heart to hear the pain in my son's voice. I know that it was all because I made poor decisions. I have the same duty to him as I have for my daughter, to have that positive, male figure in his life.

My wife and I have been together for over thirteen [13] years. It has been really hard for her to manage work and take care of our kids by her self. It is imperative that I make sure my family never has to go through these life struggles without me again.

Your Honor, selling marijuana was a poor decision to make and I realize that now. I also understand that there is no right way to do wrong, and there is no right reason to do wrong either. Selling marijuana and involving my self with the wrong crowd has done nothing but taken me away from my family. It has prevented me from being that positive and productive man that I should be and I can be.

Your Honor, not only did my poor choices hinder and hurt my loved ones but, it did the very same thing to my dreams and goals to provide a comfortable life for my family. My people skills have always helped me obtain financially satisfying jobs. My goal is to continue and only focus on making a practical and honest living for my family.

Once again, I take full responsibility for my actions. I thank you for taking the time to read my letter and consider the real man I am in imposing your sentence. I humbly ask for the court's mercy.

Sincerely,

Roberto E. Munoz

EXHIBIT B

Rosilda Duran
Judge Lewis Kaplan
December 1, 2016

Dear Honorable Kaplan,

My name is Rosilda Duran, wife of Roberto E. Munoz. Before hand, I would like to thank you for taking some time to read my letter. I know you are very occupied with many other trials.

Your Honor, Roberto and I have known each other for over thirteen [13] years. He has always been a very sociable, charismatic and caring individual. He is also an exceptional father to our children and they miss him terribly. Not having their father around has affected our emotional and mental state tremendously, as well as our lives in general. We have been struggling beyond our imagination since Roberto's absence. This ordeal has had a negative impact on our family.

In addition, for the first time in our kids's life, Roberto has missed milestone and special occasions that we would normally attend together as a family. He missed our son's kindergarten graduation and sixth [6th] birthday on this passed June 2016. Our son, was very sad to not have his father on those special days. Our eleven [11] year old daughter graduates from the fifth [5th] grade this year on June 2017. She has high hopes that her father will be present. She has also included Roberto in her birthday plans this up coming April.

Your Honor, Roberto is aware of the gravity of his mistake and I truly believe he is a changed man. Though, this has been an unfortunate situation, it made Roberto a better person. This has helped him re-evaluate his life and the path he was going through. Well enough, not to make the same mistakes ever again. I can assure you Roberto will stay away from everything and everyone that has put him in this predicament.

In conclusion, please give Roberto the opportunity to prove his transition. I am confident he will not make these mistakes again. This situation has made him see and appreciate life with a different perspective.

Again, thank you for your time. May you have great rest of your day.

Sincerely,

Rosilda Duran

EXHIBIT C



To whom it may concern,

My name is Yohanny Castro I am the assistant club manager at blink fitness in St Anns. I've known Mr. Roberto Munoz for over 10 years and he has been someone very reliable. I expressed to Mr. Munoz that I have a position available for him as maintenance making 10 an hour and working about 30 to 35 hours a week. If anyone has any further questions please feel free to call me on the number provided below.

Best regards,

..

Yohanny Castro

assistant club manager

o 917.498.9825 | blinkfitness.com

Now Franchising • blinkfranchising.com

744 St. Ann's Ave

Bronx • NY 10456

EXHIBIT D

MDC Brooklyn Education Department

Certificate of Participation

Presented to

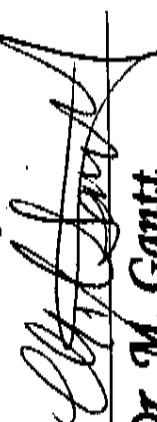
Robert Munoz

Congratulations on completing

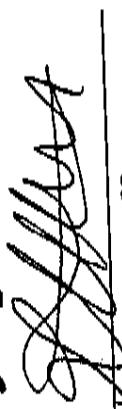
GED Ace Math

At MDC Brooklyn

This certificate is hereby issued this 22nd day of September, 2016


Dr. M. Gantt

Education Supervisor



Mr. R. Hill

Education Specialist



EXHIBIT E

Dear Honorable Kaplan,

My name is Hector Munoz, I am Roberto's uncle. Thank you for taking this time to read my letter.

Your Honor, my nephew is not a gangster nor a big time drug dealer. He is a loving father whom has devoted his life to his two [2] children, his wife and his grandmother, Sandra and to helping people.

Your Honor, I'm asking you, please, be lenient when he goes before you. In my eyes, I think he has learned that having your freedom taken from you is no joke. But his family really love and need him. We all in life make mistakes and deserve second chances.

With that I Thank you, your Honor.

Respectfully,

Hector Munoz